

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§ CASE NO. 22-90054-11
	§ HOUSTON, TEXAS
TALen ENERGY SUPPLY, LLC,	§ MONDAY,
ET AL,	§ AUGUST 8, 2022
DEBTORS.	§ 3:27 P.M. TO 4:23 P.M.

MOTION HEARING (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

(Recorded via CourtSpeak; No Log Notes)

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(Please also see Electronic Appearances.)

1 HOUSTON, TEXAS; MONDAY, AUGUST 8, 2022; 3:27 P.M.

2 THE COURT: All right. Good afternoon. We're here
3 in the Talen Energy case, the Case Number is 22-90054.

4 Electronic appearances have been made. If you wish
5 to speak at today's hearing, I would ask that press five-star
6 one time on your phone, if you haven't already.

7 Why don't we go ahead and take appearances in court?
8 And then we'll take any appearances on the phone. If you'd
9 come forward to the microphone and go ahead, please,
10 Mr. Carlson.

11 MR. CARLSON: Good afternoon, Your Honor. Cliff
12 Carlson of Weil Gotshal on behalf of the Debtors. And I
13 think --

14 THE COURT: Good afternoon --

15 MR. CARLSON: -- joined with me --

16 THE COURT: -- Mr. Carlson.

17 MR. CARLSON: -- joined with me on the phone is Matt
18 Barr, Paul Genender, Dave Morgan, and Alex Welch.

19 THE COURT: All right. Thank you.

20 Mr. Brimmage, good afternoon.

21 MR. BRIMMAGE: Good afternoon, Your Honor. Marty
22 Brimmage with Akin, Gump, Strauss, Hauer & Feld, here on
23 behalf of the Ad Hoc Group of First Lien Creditors. We have
24 filed a joinder in the -- in one of the motions that's being
25 heard this afternoon.

1 THE COURT: All right. Thank you.

2 From (404)572-4857? (404)

3 MR. MALONEY: Your Honor, good afternoon -- sorry.

4 THE COURT: Good afternoon. Go ahead.

5 MR. MALONEY: Making an appearance on behalf of the
6 Movant Ad Hoc Term Loan, the secured note group, Mark Maloney
7 from King & Spalding. You previously heard from my partner
8 Matt Warren. I'm going to be handling the hearing this
9 afternoon.

10 THE COURT: Mr. Maloney, thank you and welcome.

11 MR. MALONEY: Thank you, Your Honor.

12 THE COURT: Mr. Serajeddini.

13 MR. SERAJEDDINI: Good afternoon, Your Honor. For
14 the Record, Steven N. Serajeddini on behalf of the Ad Hoc
15 Group of Unsecured Noteholders and the backstop
16 (indiscernible) glad to be before Your Honor today.

17 THE COURT: Thank you. Good to have you back.

18 Mr. Moran, good afternoon.

19 MR. MORAN: Good afternoon, Your Honor. Matt Moran
20 on behalf of Talen Energy Corporation.

21 THE COURT: Thank you.

22 All right. We have a lot of people listening. If
23 anybody else wants to speak during the course of the hearing,
24 please press five star when you're ready to do so.

25 Let's go ahead. I don't know -- the moving parties

1 have all moved for similar relief. Decided who's going to go
2 first? Oh, I do have somebody else --

3 MR. MALONEY: Your Honor --

4 THE COURT: -- who wants to speak. Hold on.

5 MR. MALONEY: Sorry.

6 THE COURT: Let me find who this is. Hold on.

7 (Pause in proceedings)

8 THE COURT: Mr. Genender, good afternoon.

9 MR. GENENDER: Good afternoon, Your Honor. Thank
10 you very much.

11 THE COURT: All right. So who is going to take the
12 lead?

13 MR. MALONEY: Your Honor, Mark Maloney on behalf of
14 the Movants.

15 THE COURT: Thank you, Mr. Maloney. Go ahead.

16 MR. MALONEY: Thank you, Your Honor. And first,
17 thank you and your staff so much for hearing us on such short
18 notice. I know that this is an imposition. It's very
19 important to my clients, of course. But I do want to thank
20 you and your staff for hearing us so quickly and on an
21 emergency basis.

22 THE COURT: It is not an imposition and glad to have
23 you.

24 MR. MALONEY: Thank you, Your Honor.

25 Your Honor, we're here asking that the August 16th

1 hearing currently set for the backstop motion be moved to no
2 earlier than August 24th. The hearing on August 16th, the
3 setting of the hearing was made without any consultation with
4 my client. It's my understanding also without consultation
5 with any other parties that had previously sought discovery in
6 connection with the original backstop motion. That having
7 been said, we're only asking for an additional eight days.

8 Now, based on the meet-and-confer held on Sunday --
9 as soon as we saw these papers on Friday, we asked for a meet-
10 and-confer and we were able to do that on Sunday. And what
11 that disclosed is that there is going to need to be more
12 document production, including more document requests,
13 including two, I believe, from the Debtors themselves, which
14 have already been submitted to several parties, or at least to
15 a couple of parties.

16 From the Debtors' perspective, my understanding is
17 -- and I appreciate them doing this as quickly as they --
18 they're going to be finished with document production on
19 Wednesday. But then, following that, Your Honor, as we've
20 digested all of this, to my understanding, there are currently
21 seven depositions contemplated. And under the current
22 schedule, we would need to do that, you know, in essentially
23 three business days before the hearing, and five if you count
24 -- if you count the weekend.

25 I just -- and then, after that, Your Honor, from my

1 client's perspective, we want to digest everything that we
2 heard, both in the documents and the depositions, and
3 determine if we're going to object and we clearly have problems
4 and we have concerns, and we want to examine those and take
5 discovery of -- and if there's going to be objections -- and
6 there might well be objections from at least some folks, you
7 know, there's going to be a material evidentiary hearing with
8 a number of witnesses, I believe there's seven deponents. And
9 I know there will be lots of exhibits.

10 And this is just going to require some effort to
11 prepare properly. That is, assuming there are objections, and
12 we have to assume that there may be, but we have not made that
13 firm decision yet. All we're asking for is another eight days
14 to get all this done in a sufficient and hopefully orderly
15 process.

16 And this is a material issue for my clients, Your
17 Honor. And I say that because, you know, I have not heard a
18 specific business reason why this had to happen so quickly.
19 But the Kirkland -- or the Ad Hoc Unsecured Group, represented
20 by Kirkland & Ellis, they filed a response to the
21 (indiscernible) and I appreciate their response. We panned
22 that response, it illustrates really what our issues are here.
23 They believe that this motion -- my motion is a delay tactic
24 or a strategic or what have you. I can assure you it's not.

25 If I was interested in a strategic, lengthy passage

1 of time, I wouldn't be looking for eight days. Our request is
2 measured with the work that we think needs to be done and this
3 due process is necessary so we can get this done in a proper
4 fashion (indiscernible) your clients, my client, wouldn't even
5 have an interest in this because you're going to get paid in
6 full anyway. And let's discuss that, Your Honor.

7 I note that they say in their response, and I quote:
8 "The restructuring transaction supported by the backstop
9 motion will render allowed secured claims held by the Ad
10 Hoc Term Loan and Secured Notes Group and the Ad Hoc
11 Group of First Lien Lenders unimpaired and paid in full,
12 in cash."

13 And as you heard from my partner Mr. Warren, we
14 would love nothing more.

15 Here's the problem: This process and these
16 agreements don't guarantee that in any way, shape, or form.
17 More importantly, there are scenarios in which (indiscernible)
18 happened that way and all we'll be left with is a sub two-
19 hundred-and-twenty-eight-million-dollar administrative claim
20 that could be paid out of pocket, out of the collection of
21 collateral that my clients have. So this is a very, very
22 material issue.

23 I will tell you this, Your Honor. If
24 (indiscernible) group were willing to give up, where you get
25 paid in full, I get my fee, if you don't get paid in full, I'm

1 happy not to take the fee. We'll still have -- that's an
2 issue that I'm fairly certain that will be (indiscernible),
3 but that is not where we are.

4 They note further in their response -- and I think
5 this is also very instructive and telling -- that, when it
6 turns out, after they executed their original backstop
7 agreement, that it turned out that that agreement was no
8 longer sufficient, that the Debtor needed more money because
9 of an updated business plan, that they stepped up and
10 (indiscernible) that additional funding under these amended
11 agreements that are now the subject of the new backstop or the
12 backstop motion of -- that is now set for hearing on
13 August 16th.

14 I certainly am happy that they stepped up, but
15 here's the question. They weren't contractually obligated to
16 step up. And if the backstop agreement (glitch in the audio)
17 administrative claim is approved, they might be contractually
18 obligated to step up again if it turns out that the Debtors
19 need more money than the backstop agreement is committed to.
20 And we know, Your Honor, that that's not a hypothetical
21 concern because it's already happened. It's not speculative,
22 it's already happened.

23 And so my clients' concern is: What if it happens
24 again? How likely is that? Why did it happen the first time?
25 What went wrong and so on? We want to understand all of those

1 issues, why they need the money, why did the business plan
2 change, why they now have a sale option -- which is very
3 interesting and probably a very positive development and we
4 want to understand it. What is the prospects for all of these
5 things actually occurring and what are the risks it won't play
6 out the way everyone is hoping because we know the Debtors'
7 own projections have not panned out exactly as they originally
8 intended. So, again, this isn't hypothetical.

9 Now -- so it matters to my client because, if the
10 Debtors do need more money, the ad hoc unsecured group is not
11 contractually committed to provide it. And all that may
12 happen is my client may be left holding the bag, and that is a
13 bag with a \$228 million administrative.

14 So I beg to differ with Kirkland's response that my
15 clients don't have a very meaningful interest in this issue,
16 which is not strategic. We want enough time to understand it,
17 to digest it and decide whether we want to object; and, if so,
18 how best to prosecute that. And I believe we need the minimal
19 additional time that we've asked for to make sure that that
20 gets done in an orderly fashion.

21 And so that's what it boils down to. This is a very
22 modest request. It's only designed to make sure that we can
23 get things done appropriately, consistent with due process.
24 It's not strategic, it's not a delay. It's just asking for
25 enough time to get them right, consistent with due process.

1 And with that, Your Honor, I'll yield to the others
2 who are either joining or who filed their own motions. And
3 I'm happy to respond to any questions. But I do, once again,
4 appreciate the Court's time.

5 THE COURT: Mr. Maloney, one of the things you
6 mentioned was that the admin claim would be paid out of your
7 clients' collateral. Could you explain that a little more
8 fully?

9 MR. MALONEY: Well, Your Honor, as I understand it,
10 that what happens, if the Plan as currently contemplated by
11 the Debtors is unable to go effective because the funding
12 doesn't prove enough -- appreciate what's going to have to
13 happen is going to be a combination of committed funds by the
14 plan support parties and (indiscernible) consideration of the
15 Debtors. And if those numbers don't match up, then we won't
16 go effective. And if we don't go effective, then that
17 triggers a termination and no obligation of the Kirkland
18 parties to fill that gap or to come up with more money.

19 And now there's an admin claim because the ultimate
20 result of these cases, which presumably would be a different
21 Plan where, you know, the secured creditors essentially take
22 the company back or some other structure. But in order to
23 confirm that Plan, you've got to pay this admin claim. And I
24 would be happy for some sort of arrangement or commitment that
25 that admin claim is paid out of whatever sources of funding

1 might available (indiscernible) collateral. I'm told that
2 there may be some, but I can't be assured of that. And
3 certainly unless --

4 THE COURT: I guess I'm trying to understand, under
5 the law, how they would have the right to eat into your
6 collateral to pay an admin claim. It seems like that would be
7 prohibited by the law. That's why I'm questioning that
8 argument, it's because it means I don't understand the
9 argument because it seems to me you could simply say, no,
10 don't use my collateral to pay the admin claim, and that you
11 have to win that as a matter of law. Therefore, I'm thinking
12 I don't understand then what's going on, and that's why I'm
13 following up on that part of your argument.

14 MR. MALONEY: Your Honor, I believe it comes down to
15 a practical matter. My clients -- at the end of where the
16 road we travel, if that road ends, this deal is better
17 (indiscernible), then the alternative is necessarily going to
18 be something that requires some measure of a confirmed Plan
19 that figures out a way to transfer value and transfer assets,
20 essentially a debt-for-equity swap with my clients being the
21 shareholders. But we're not going to be able to confirm that
22 without taking care of admin claims, regardless of where the
23 funding has to come from.

24 Now we could decline, we could say, no, that's not
25 going to happen.

1 THE COURT: Right.

2 MR. MALONEY: Then that means --

3 THE COURT: At which --

4 MR. MALONEY: -- we all get --

5 THE COURT: At which point the admin claims then
6 would get paid in full, and they got to compromise, right? I
7 guess I'm -- I think what I'm hearing you say is it doesn't
8 really come out of your collateral, but you may decide later
9 it's in your strategic interest to have it come out of your
10 collateral. And I got it that that's a problem you need to
11 worry about. I wanted to be sure I understood the argument
12 right, and I think I do, if -- I'll let you tell me if I don't
13 understand it right.

14 MR. MALONEY: Well, we'll be left to either rest on
15 rights that say, you know what, you guys go figure this out,
16 and then the company just, you know, languishes without an
17 exit. My clients don't have an interest in that, either.

18 THE COURT: And there's --

19 MR. MALONEY: But I don't think we should be made
20 to --

21 THE COURT: There's always an exit, sometimes it's
22 to a lower number.

23 MR. MALONEY: Well, you're right, Your Honor. I
24 guess, at the end of the day, what this does is it -- you
25 know, it constrains us, I think inappropriately and

1 unnecessarily. If we get to a place where what everybody is
2 saying will happen, which we'll get paid in full, okay.

3 THE COURT: All right. Okay. Thank you.

4 Who else wants to join in the argument?

5 Go ahead, Mr. Brimmage.

6 MR. BRIMMAGE: Good afternoon, Your Honor. Again,
7 Marty Brimmage of Akin, Gump, Strauss, Hauer & Feld, here on
8 behalf of the Ad Hoc Group of First Lien Creditors.

9 I think Mr. Maloney articulated, both in his motion
10 and in his arguments, the sum and substance of our argument.
11 I'm going to just highlight a couple of points, Your Honor.
12 And I'm really going to focus on what I'll call the procedural
13 aspects of the discovery aspects, the schedule and the timing
14 and not the merits.

15 So, to make sure the Court is clear, there were two
16 motions filed and we filed a joinder. Mr. Moran of Vinson &
17 Elkins sent us a email at 3:32, so two minutes after the
18 hearing started, letting us know that he had agreed to the
19 18th, so he would not be arguing. I'm unbelievably
20 disappointed in that for a variety of reasons, but let me go
21 through that. But I wanted the Court to have that update
22 right up front. So, instead of three of us arguing, there's
23 only two.

24 But let me -- be that as it may, let me go through
25 this real quick, if I could. The bottom line, Your Honor, is

1 the time frame set for this to be heard on the 16th is simply
2 just not enough. Adding two more days -- which, by the way,
3 we, frankly, did not consider -- is -- doesn't alleviate the
4 strict time limits of this and how much has to be done in a
5 short period of time.

6 And I know that this is a really important issue,
7 but I'm going to throw out there that there's an availability
8 issue for the 18th and 19th, as well, that I'll go into if the
9 Court wants to hear about it. But we never went there on that
10 because the 18th really wasn't an issue.

11 What we really need is another week, which was put
12 in the papers by both parties, or all three parties,
13 certainly, at the time. And the week is for good reason.
14 Given the amount of stuff -- and Your Honor, I know what
15 you're thinking. These are big firms, sophisticated firms,
16 with lots of people, surely they can move mountains in a
17 matter of days.

18 THE COURT: Actually, that's --

19 MR. BRIMMAGE: And the answer is, normally --

20 THE COURT: That's not what I'm thinking. What I'm
21 thinking is, is, when you're asking me to move the hearing to,
22 I plan to be with my family.

23 MR. BRIMMAGE: And keep that in mind, please,
24 because you being with your family is really important. Some
25 of us our moving our freshmen into college dorms on the 18th,

1 and more than one of us. And others of us have other kid
2 obligations on that date, as well. And we didn't go into that
3 in the papers because it wasn't that big a deal. So, ideally,
4 one week would be perfect. But because of reasons that we
5 totally understand, that doesn't work.

6 But the date that does work absolutely perfectly,
7 and there's no business reason not for it to, is the 29th.
8 The Court already has time set aside for the Disclosure
9 Statement hearing. Everybody knows the Disclosure Statement
10 hearing isn't going forward on the 29th. Everybody has set
11 aside the 29th and are available and ready to roll on the
12 29th.

13 So, while it's not perfect, it's not ideal, it's
14 certainly way better than the 18th because it does give us
15 time to do two things because that's all the discovery that
16 needs to be done.

17 Also, Your Honor, I want to highlight we may have a
18 discovery fight that is brewing. I won't preview it for you
19 right now, but it has to do with discovery that we sought that
20 we understand we're not going to get, and we'll deal with that
21 in due course. But having it on the 29th affords time to deal
22 with all these issues in a timely way and get to the Court and
23 let us file objections in a timely way and have an organized
24 hearing.

25 So, while I recognize it's not perfect, Your Honor,

1 and I get that, under the circumstances, the 29th is already
2 available, the 29th affords the time that it takes to get this
3 done, and the 29th is what we would respectfully request the
4 Court urge or order the Debtors to move this to.

5 And Your Honor, if you have any questions, I'm happy
6 to answer them, but I didn't want to go over any of the stuff
7 that Mr. Moran already went over, or what's really the debate.

8 THE COURT: Mr. Brimmage, thank you.

9 Mr. Moran.

10 MR. MORAN: Thank you, Your Honor. Matt Moran for
11 Talen Energy Corporation.

12 We did file a motion because there is a lot to do
13 and we thought August 16th was unworkable. The Debtors
14 proposed this afternoon, August 18th. There's still a lot to
15 do, maybe less than ideal. But we had worked out an agreement
16 with the Debtors that we would get our track shoes on and get
17 it done if the hearing moved to August 18th, and we reached
18 that agreement right after we started, which is why we didn't
19 inform the Court earlier.

20 But to be clear, we did intend to object to this
21 backstop motion. We have a lot to say about it. We have a
22 lot to do in connection with the hearing. But for purposes of
23 today, we're putting down our swords if the hearing was to
24 move to the 18th.

25 THE COURT: Thank you.

1 Mr. Fleck?

2 (No verbal response),

3 THE COURT: Mr. Fleck, I don't know if that's you or
4 someone else from your firm, but you were in the middle of my
5 screen, so I figured I would call on you to see what the
6 committee's position is. And you can pass this off to
7 somebody else if you want to.

8 MR. FLECK: That's okay, Your Honor. It's an easy
9 one today for us. For the Record, Evan Fleck of Milbank on
10 behalf of the Official Committee of Unsecured Creditors.

11 Your Honor, we did not join in the motion, that was
12 by design. The Committee does not object to the scheduling of
13 the hearing for the 16th. We'll be prepared to go forward
14 that day.

15 We have not yet reached a determination as to
16 whether, on the merits, we're in support of the backstop as
17 revised. We have had constructive discussions with the ad hoc
18 group and the Debtors on those issues, and they are
19 continuing. But as to today's motion, we do not join in it.
20 We don't have any objection to the hearing being set on the
21 16th.

22 THE COURT: Thank you.

23 All right. Who wants to respond from the Debtor or
24 from the lender?

25 MR. GENENDER: Your Honor, Paul Genender of Weil,

1 Gotshal & Manges for the Debtor -- for the Debtors. If I can
2 jump in, if that's okay with the Court?

3 THE COURT: Sure.

4 MR. GENENDER: Thank you.

5 I thought it might make sense -- and Judge, if I can
6 ask that Jenae Ward (phonetic) be a presenter. We didn't have
7 time to do a reply, a response, and I thought it might help
8 put a few things into focus and context for the Court a little
9 bit. If Jenae Ward could be the presenter, that would be
10 great.

11 THE COURT: Hold on.

12 MR. GENENDER: Thank you.

13 THE COURT: So there's an awful lot of people there.
14 If Jenae Ward can turn on their camera, I will be able to find
15 you more easily. I'm sure -- wait a minute. Maybe I found
16 you. Hold on. I found Jenae Ward. All right.

17 MR. GENENDER: Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 You are now the presenter.

20 MR. GENENDER: Thank you, Judge.

21 So while Ms. Ward is putting up these couple of
22 slides, I think it's important, in connection with thinking
23 about this hearing, to realize this is not something that
24 started last Friday, when a notice was filed. The original
25 backstop motion was filed on June 13th. The hearing was

1 originally set for July 11th. It was later extended to
2 July 26th and then -- at the request of the (indiscernible)
3 and their effort, it was adjourned.

4 The parties that opposed the backstop motion that
5 was originally filed about ten days after the motion was filed
6 on June 13th, put down significant discovery on the Debtors
7 between the 22nd and 30th of June, six sets of document
8 requests, interrogatories, three dozen requests for admission.
9 The Debtors answered the written discovery, produced over 2700
10 documents from 12 custodians in advance of the original
11 hearing date. I know the Court can imagine that, in producing
12 that amount of documents, remember we went through the review
13 was multiple-fold of those numbers.

14 Depositions were scheduled for three requested
15 witnesses (indiscernible) VP of Restructuring (indiscernible)
16 is a (indiscernible) and a 30(b)(6). Before the depositions
17 occurred, the hearing was adjourned to provide the Debtors
18 additional time to negotiate necessary amendments to the BCL
19 and the restructuring support agreement to address additional
20 capital needs based on the updated business plan.

21 And then the next slide.

22 Since that time in late June, the Debtors worked to
23 update (indiscernible) business plan to reflect the shifts in
24 the market. That updated business plan was approved by the
25 TES Restructuring Committee on July 14th. On the next day,

1 July 15th, it was shared followed by various creditor groups,
2 including TEC and Riverstone. The Debtors were providing
3 documents and diligence related to the updated business plan
4 (indiscernible).

5 In the two weeks leading up to August 4th, the
6 parties exchanged drafts of termsheets with respect to
7 amendments of the RSA and the BCL. On August 4th, the
8 Restructuring Committee approved the updated business plan and
9 amendments, the RSA termsheet was sent to BCL.

10 August 5th, last Friday, the Debtors filed a notice,
11 the amended RSA termsheet and the amended BCL (indiscernible)
12 hearing for August 16th, which aligned as a milestone in the
13 amended agreement.

14 As it relates to a proposed timeline, Your Honor,
15 even before filing the amended RSA, termsheet, and the amended
16 BCL before seeking any additional discovery requests, Debtors
17 anticipated the needs providing incremental discovery to cover
18 the time period between mid-July and the present, August 5th.
19 The first additional production -- in other words, we received
20 -- when we started gathering documents to be produced before
21 they even made a request of us, Your Honor, we got a formal
22 request from Mr. Moran's clients Saturday night. We'd already
23 started gathering documents.

24 We got on the phone, I think there were 45 or 50
25 people invited (indiscernible) and conferred and laid out what

1 we thought would be a workable schedule, letting everyone know
2 that we would be producing documents on a rolling basis,
3 irrespective of waiting on requests, and that we would have
4 that completed by Wednesday of this week. And we had already
5 made production in that regard.

6 And that -- and then understanding that TEC had
7 requested our deposition without proving they were all
8 necessary, we would make the witnesses available this Friday
9 and this weekend, and that we would need two short depositions
10 ourselves, and limited issue targeted discovery to TEC and its
11 advisors, which we've done.

12 And then, just to be sure, doable, 100 percent --
13 and I think the reason I wanted to go through this with Your
14 Honor is to let you know that this is an updating and
15 refreshing of discovery and not starting from scratch by any
16 means. The hard work, the heavy lifting is done.

17 As of July 21st, Your Honor, the -- three of the
18 five witnesses that were requested were to be deposed on that
19 day. And there was not a single complaint about discovery
20 that I was told or was brought to my attention. And we had
21 adjourned because there other things that had to happen. But
22 we're just refreshing as it relates to this.

23 And I think that, with the Court's permission, I
24 would like to pass the podium to my partner Alex Welch to
25 speak to -- I went through the discovery, what the logistics

1 would be in that regard, Your Honor. I'd like Mr. Welch to
2 address why this isn't -- why this isn't an entirely new deal,
3 why this is not an entirely new deal and why the changes are
4 not that significant. And with the Court's permission, if I
5 could turn it over to Mr. Welch for that.

6 THE COURT: Hold on one second. I have somebody
7 that wants to speak. This may be Mr. Welch, I don't know.
8 But from (718) 536 --

9 MR. GENENDER: It is.

10 THE COURT: -- 8463.

11 MR. WELCH: Thank you, Your Honor. Can you hear me?

12 THE COURT: Yes, sir, Mr. Welch. Go ahead.

13 MR. WELCH: Thank you. For the Record, Alexander
14 Welch of Weil Gotshal for the Debtors, Your Honor.

15 And I just want to pick up on what my partner had to
16 say about the changes and the time. As you heard, Your Honor,
17 we filed the backstop motion June 13th, nearly 60 days ago.
18 Now these movants have had sufficient time to prepare. The
19 objections -- everybody here knows and been preparing for a
20 very long time on what we expected before we filed the motion,
21 before we even entered into the backstop commitments, we
22 received the backstop commitments.

23 And the changes that I'll take the Court through in
24 a moment, we'd say are material for the Debtors, but not
25 material, in terms of prejudice of anyone in preparing for

1 objections or don't think the question, Your Honor, what has
2 changed?

3 And I'd say, following the updating of the Debtors'
4 business plan, it would become evident that we needed to top-
5 size the RSA (indiscernible) and as Your Honor will recall, we
6 adjourned the backstop hearing, we returned to the negotiating
7 table with the backstop parties. And we're happy to report it
8 was time well spent.

9 And so, as you will see, on August 5th, we filed the
10 amended backstop letter, together with the amended
11 restructuring support agreement. And those updated amendments
12 are due tomorrow, and the backstop parties are expecting to
13 have them approved by the negotiating milestone of August 16.
14 Your Honor, we fought hard to keep it from being any shorter
15 than that. And that will be borne out in the discovery we
16 produced. But frankly, this was the amount of time we thought
17 parties would justifiably and reasonably need to prepare for a
18 hearing, while balancing the needs of (indiscernible) backstop
19 parties, that given the contract up to now \$1.55 billion in
20 equity financing. And as I'll take you through, we
21 (indiscernible) prejudice anyone's ability to prepare for the
22 16th.

23 Now it includes additional benefits for the Debtors
24 and removes prior existing conditionality. In other words,
25 Your Honor, we believe we've narrowed the gap and the issues

1 for the estate. For example, we have (indiscernible) the
2 Debtors' business plan, upsize from one six five to 1.9
3 billion. The backstop parties have agreed to increase the
4 (indiscernible) commitment from 1.3 to 1.55 (indiscernible)
5 Your Honor, no small feat, and so one we certainly appreciate.

6 The Debtors have obtained additional capital
7 (indiscernible) to match any difference between the commitment
8 and the requirements of the rights offering, again, to provide
9 more certainty, to address some of the objections we expect to
10 hear on the -- at the hearing, which we hope will be on the
11 16th or the 18th.

12 We agreed to remove numerous diligent doubts,
13 notably, those around Debtors' pension program, employee
14 (indiscernible) retirement obligations, and environmental
15 obligations (indiscernible) create even more certainty around
16 the BCL, certainly (indiscernible).

17 Finally, we negotiated a go-shop, you'll see this in
18 the papers. And it's just in response to the (indiscernible),
19 which you'll see in the (indiscernible), but nevertheless we
20 responded by asking (indiscernible) go-shop (indiscernible)
21 that's reflected in the papers. But we can't begin that go-
22 shop period until the BCL is approved. A fair bargain was
23 struck with the BCL problems, but one we're excited to get
24 started as soon as possible.

25 And one more point, if I may, Your Honor? We know

1 (indiscernible) following the confirmation hearing. We've
2 potentially shortened that by getting clarity on future
3 ownership now, the sooner the better. Getting the BCL
4 approved helps accomplish that and (indiscernible) if ahead of
5 confirmation, rather than following it.

6 THE COURT: So --

7 MR. WELCH: (Indiscernible) so, in sum, Your Honor,
8 we think the changes that have happened over the last weeks
9 enure to everyone's benefit, and particularly the Debtors, and
10 shouldn't have caused any prejudice to those preparing to
11 object to the Debtors' motion.

12 And with that, I'll pass the virtual podium to my
13 partner, Mr. Genender.

14 THE COURT: Thank you, Mr. Welch.

15 MR. GENENDER: Your Honor, the only thing that I'd
16 want to say would be that (indiscernible) is doable. And I
17 think, taken in context, this is a refresher and an update.
18 And I know I can speak from experience that I've done more in
19 less time in your court.

20 THE COURT: All right. There's somebody else that
21 has asked to speak, and then we'll come back to you,
22 Mr. Brimmage. I see you there. I need to find out who this
23 is.

24 Oh, it's Mr. Serajeddini again. We'll let your side
25 finish, Mr. Serajeddini. Go ahead.

1 MR. SERAJEDDINI: Thank you, Your Honor. For the
2 record, Steven Serajeddini of Kirkland & Ellis.

3 Your Honor, I'm going to try my best not to be
4 duplicative. I think it's important here that the motion has
5 been on file for two and a half months. The objecting parties
6 have had the opportunity to gather whatever they need.

7 The only (indiscernible) that we heard about that's
8 informing what they're doing today is the filing -- or the
9 finalization, rather, of the Debtors' business plan. I just
10 want the Court to be aware that these parties have had that
11 business plan for many weeks, as Mr. Genender showed on the
12 demonstrative, and they've had ample opportunity to ask
13 questions, try to understand it. And that's not a new fact,
14 that's not something that they found out about on Friday, Your
15 Honor.

16 Moreover, they have also had access and can -- or
17 are free to -- or sorry, (indiscernible). They also
18 understand that the Debtors have been properly hedged through
19 the end of the business plan. And this is the first time that
20 the Debtors have formally updated the business plan. It's not
21 like there was a business plan that was on file and there's
22 some dramatic, material alteration. The Debtors have
23 implemented their hedging strategy (indiscernible) through the
24 end of the case, and that hedging strategy is now fixed. So
25 we're not expecting any future material modifications to that

1 business plan. So that's all fixed and they know that and
2 they can confirm that with a couple of simple questions and
3 some basic diligence.

4 That's not something that requires depositions.
5 This is a business judgment issue. Your Honor already has the
6 facts before, frankly, to make that business judgment
7 determination. Today, for the first time Kirkland heard that
8 there were substantive problems was actually quite a narrow
9 one and one that I think Your Honor's line of questioning was
10 very helpful in terms of pinning down.

11 These parties -- were not seeking a carveout to
12 their collateral. So these parties are secured creditors.
13 And to the extent they feel like their secured collateral is
14 in jeopardy as a result of these Chapter 11 cases, they can
15 come before Your Honor and seek adequate protection. They
16 have that right, they can do that at any point in this process
17 if this disastrous state of the world that apparently
18 (indiscernible) it's not possible for the company to now
19 hedged, they're free to come to the Court and seek that
20 relief. And so that's their protection.

21 Their protection is not to come in here and say that
22 the parties that are justifying their position in this case
23 (indiscernible) a billion and a half of equity behind the
24 secured creditors are somehow not entitled to reasonable
25 compensation for that. And again, that's not an issue that

1 requires extensive discovery. That's something we can debate
2 before Your Honor and, at most, it will require a financial
3 advisor on either side to debate it before Your Honor to get
4 to the bottom of.

5 So, for that reason, Your Honor, it's the Debtors'
6 motion, it's been on file for over two and a half months, and
7 these parties should be prepared to proceed. And if they're
8 not, it's only the fault of their own.

9 THE COURT: All right. Thank you.

10 Mr. Brimmage. And then we'll go back to
11 Mr. Maloney.

12 MR. BRIMMAGE: Thank you, Your Honor. Again, Marty
13 Brimmage with Akin Gump.

14 So I want to emphasize I'm not going to argue the
15 merits of the underlying issues. But I think the undisputed
16 facts absolutely tell the story.

17 Now let's be clear about what you just heard from
18 the Debtors. What you heard is they unilaterally reset the
19 depositions before twice, and then, immediately before them,
20 they canceled them. And then not a word from them. Yes, they
21 did produce documents before. But this notion that we should
22 all be ready and, if we're not, it's our fault, we were never
23 put on notice about the Friday filing until the Friday filing
24 came out, that was our notice. There was no notice about the
25 16th until the 16th came out in the notice, and that was our

1 notice. Nothing was done to identify that schedule or what
2 was happening. The depositions that are set were put in a
3 time frame without consulting with us.

4 So this notion that we should have already been
5 prepared for this and that we knew this was coming, that is
6 true on one hand, but specifically when is absolutely not
7 true.

8 Now let's break this down a little bit. There were
9 -- there's going to be five to six depositions that
10 Mr. Genender talked about, but now he wants two more. Not a
11 problem, he's entitled to that. So we're looking at seven to
12 eight.

13 But what else did we hear from Mr. Genender that I
14 thought was incredibly telling? If this is so ready, why
15 aren't the documents already here? He's going to take until
16 Wednesday to produce the rest of the documents. Now what is
17 the rest of the documents? I don't know, Your Honor, we don't
18 know. There's no evidence on that. But we shouldn't be
19 having to get ready for depositions where we don't have them
20 all.

21 And so Thursday is not practical because we're not
22 going to get them. And by the way, there's not a time frame
23 on Wednesday, there's just Wednesday. We'll get you -- we'll
24 complete the documents. Again, if were supposed to all be
25 ready, we should already have them. Those should have been --

1 I mean, we're -- they should be in our laps, ready to roll.
2 They're not and they're not going to be. That's undisputed.

3 What else is undisputed? The number of depositions
4 and the days that are remaining. What else is undisputed?
5 They wanted it on the 16th. That leaves us Monday, the 15th,
6 to get ready for eight possible witnesses, maybe seven. So
7 that means we start depositions on Friday, we go Saturday,
8 Sunday, we're going to do seven or eight. Then we have Monday
9 to prepare, and we're going to have Tuesday.

10 So let me give you another undisputed fact. The
11 lead litigation counsel and the lead (indiscernible) counsel
12 for Akin Gump are not available on the 18th, period, end of
13 story. So that would be inappropriate for our clients to go
14 forward. That's an undisputed fact, Your Honor.

15 So I would just simply say we didn't create this
16 situation. I didn't hear of a business reason why it can't
17 get moved to the 29th, when we know, undisputed fact,
18 everybody is available because everybody has had it on their
19 calendar for a long, long time. There's simply no reason not
20 to move it.

21 So, Your Honor, we would respectfully request, based
22 on the record that you've heard today and the admissions from
23 the Debtors about where they are with discovery, document
24 discovery, and that they want two more witnesses, fine.
25 That's just simply too much in that short period of time, so

1 we would respectfully request that you move it to the 29th.

2 THE COURT: Thank you.

3 Mr. Maloney.

4 MR. MALONEY: Thank you, Your Honor.

5 I would -- I appreciate Mr. Brimmage's comments and
6 I won't repeat them. I would observe, yeah, this motion has
7 been pending for quite a while. You know, if the Debtors are
8 going forward on their original schedule and gotten this
9 backstop agreement approved, we'd be in a very unfortunate
10 posture because it would have been approved before the
11 business plan was resolved -- was revised, before we knew the
12 backstop agreement didn't provide enough money.

13 But that happened. And I can't emphasize enough how
14 critically important and concerning it is to my client that
15 that happened. And so the idea that we want to exhaustively
16 understand why that happened and why, according to the
17 Debtors, that it's not likely to happen again, I can't
18 overstate the importance of that from my client's perspective,
19 Your Honor.

20 And I'll say one more thing. If I thought the
21 discovery was going to proceed until now until whenever we --
22 you set the hearing, it would be like it was before, I would
23 tell you it's just -- it can't work, we're going to need
24 30 days because that was not an orderly process. I personally
25 was finding out right before depositions were supposed to

1 occur that they weren't happening, after I had traveled to
2 New York for them and whatnot.

3 I understand that things got hairy and difficult and
4 there were all sorts of complications, so I understand that.
5 And (indiscernible) anticipating it's going to be better in
6 the second round, then I believe we can get it done with an
7 additional eight days. But that was not an orderly process,
8 and I'm hoping for more and I'm expecting more. And if we can
9 get it done, you know, eight days (indiscernible) until the
10 29th.

11 But the bottom point is the business plan that we
12 received on Friday, and I haven't sat down with
13 (indiscernible) to compare them. I know that others in my
14 firm and others that are (indiscernible) have, it's not the
15 same. There are differences. And being behind exactly why
16 the changes occurred is an important issue. And it may well
17 be one of the issues that Mr. Brimmage was mentioning that
18 there might be a dispute over in terms of gaining that
19 information.

20 So we want to get this information and we want to
21 get it quickly. We're not trying to delay. We just want
22 enough time to get it right because it's a critical issue.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 Mr. Moran --

1 MR. MORAN: Your Honor --

2 THE COURT: -- you can go ahead, and then I'm going
3 to go back to the Debtor for a moment.

4 Go ahead, Mr. Moran.

5 MR. MORAN: Your Honor, I just wanted to clarify or
6 comment on a few issues that were mentioned by the Debtors and
7 the ad hoc group that we take issue with.

8 First, in one of those sheets of the deck, it said
9 that the parties received or circulated, I think, drafts of
10 the new RSA an the new backstop commitment letter prior to
11 last Friday. Not us, we never saw it before last Friday.
12 Last Friday was the first time we saw the new RSA or the new
13 backstop commitment letter.

14 Second, there was a comment about no complaints with
15 the discovery process. To be clear, we have had some issues,
16 some of them were worked out. Some other things, like the
17 privilege log, we're still waiting on, and we may have further
18 issues that -- I don't want to get -- not responding to.

19 And then finally, there was a comment that the
20 updated business plan has been out for weeks. There was an
21 updated business plan that came out on July 15th, but there
22 was an additional business plan that came out last week -- I
23 saw it for the first time last week -- that had some
24 additional information that changed the size of the equity
25 rights offering.

1 So things are changing quickly, and I wanted to just
2 comment on those three issues.

3 And I guess the last thing, Your Honor, is we didn't
4 have a chance to talk to any of the Debtors about this
5 business plan. And they've taken the position that all of the
6 discovery we need to get related to the business plan has to
7 go through the formal litigation process, as opposed to
8 informal communications (indiscernible).

9 THE COURT: Thank you.

10 Mr. Brimmage has indicated that they had requested
11 these depositions and did not get them, and then you all have
12 rescheduled them for this weekend. Is that accurate?

13 MR. GENENDER: Your Honor, this is Paul Genender.
14 I'm assuming that question was directed to me.

15 The -- I don't think that's what Mr. Brimmage said.
16 The depositions that were previously requested by Mr. Moran
17 and by, at that point, the UCC, I think Mr. Brimmage had
18 joined in one or two of those. Those were of a corporate
19 representative, that's the one Mr. Brimmage requested.

20 And the other two that Mr. Moran had previously
21 requested were of John Chesser (phonetic) and Len LoBiondo
22 (phonetic) of the company. Those were scheduled and moved
23 around multiple times because the hearing was moved, once at
24 Mr. Moran's request from the 11th of July to the 26th. And
25 then, yes, the depositions were moved, in consultation with

1 Mr. Moran and Mr. Brimmage, and they were -- and
2 (indiscernible) with Mr. Maloney and that's (indiscernible)
3 And I appreciate that he was gracious about (indiscernible)
4 it.

5 But they weren't -- they didn't happen because the
6 hearing eventually got adjourned, to be reset for the 15th of
7 August, Your Honor, last Friday. The depositions that
8 Mr. Moran requested last Friday night, which went from 3:00 to
9 5:00, were even -- there was a comment that they were
10 unilaterally set. They wanted to meet and confer about them.
11 On Sunday morning, I laid out we spent time when we could make
12 those witnesses available after the documents are produced.

13 And I do want to correct one thing Mr. Brimmage
14 said. He said (indiscernible) if we're so ready, why does it
15 take until Wednesday to get the documents? Well, it's not
16 taking until Wednesday to get all the documents, we've already
17 made one or two productions, and we're going to continue to
18 make those on a rolling basis. But some of the documents,
19 Your Honor, that we're producing that they've requested occur
20 up until (indiscernible) together. And they've requested them
21 very extensively from a number of different people
22 (indiscernible) necessary, but we're not -- we're trying to
23 alleviate any dispute there.

24 And so I'll stop there. I think that -- I hope that
25 answers your question, Your Honor. We had proposed a date for

1 witnesses that Mr. Moran requested and the current schedule,
2 obviously the schedule moved back a couple of days. Mr. Moran
3 had suggested something that might be a little bit less
4 ambitious to get the witnesses.

5 And as it relates -- as it relates to the two
6 depositions that we're requesting, Your Honor, I'm sure this
7 is just an oversight, but I specifically said that they're
8 short, two hours or less, emphasis on the "less," pretty
9 targeted.

10 THE COURT: All right.

11 MR. BRIMMAGE: Your Honor, if I can just make one
12 point of clarification?

13 THE COURT: Go ahead.

14 MR. BRIMMAGE: And I'm sure that Mr. -- it's an
15 undisputed fact and Mr. Genender will confirm this, or Weil
16 will. We didn't notice all of the depositions before, but we
17 did identify to Weil that we would attend and participate in
18 all of the depositions that were set to go forward. I just
19 wanted -- I don't want the Court to misconstrue --

20 THE COURT: All right.

21 MR. BRIMMAGE: -- whether we noticed or didn't
22 notice them back (indiscernible) --

23 THE COURT: The issue --

24 MR. BRIMMAGE: -- (indiscernible).

25 THE COURT: The issue with the last one -- the issue

1 with the last one doesn't matter. It was whether the Debtor
2 produced those witnesses, was my concern. All right.

3 MR. BRIMMAGE: And then, the bottom line, Your
4 Honor, they unilaterally canceled them, period. That's the
5 bottom line.

6 THE COURT: All right. Anyone else?

7 (No verbal response).

8 THE COURT: I'm going to grant the motion. I
9 believe this is a terribly important matter to determine
10 whether the backstop should be approved. It is for a huge
11 amount of money.

12 The main reason not to grant the motion is to let
13 the go-shop get started. And I, Mr. Welch, very much
14 appreciate the arguments that you're making about that.

15 I am persuaded, however, given the importance of
16 what's happening, that taking the depositions ending over the
17 weekend is just not fair and workable. The reason why the
18 hearing is set on the 16th is the Debtors requested it last
19 Friday to be set on the 16th. I have not heard a reason for
20 the 16th versus the 29th, other than the go-shop, and a really
21 important reason, which is to try and comply with the RSA.
22 RSAs can't control the Court. We haven't approved the RSA and
23 I'm not going to let it interfere with people's due process
24 rights.

25 I have expressed before that I think this type of

1 backstop financing is a -- and I don't mean "this type," in
2 other words, its economics, I'm expressing no view on the
3 economics. I think the existence of backstop exit financing
4 is a great invention. Whoever here invented that -- and it's
5 probably one of the people that I'm looking at. And we ought
6 to respect that to the highest degree possible, but that does
7 not include not giving people a full chance to examine it.

8 And although this has been on file for 10 or
9 12 weeks, 10 or 11 weeks, there were changes and there hasn't
10 been the discovery that I would have expected. I'm not sure
11 which straw broke the camel's back, but it's probably the
12 rescheduled depositions that have just persuaded me that I
13 ought to grant the motion.

14 So the hearing will be on the 29th. If that blows
15 the RSA, it blows the RSA. It's not my intention, but I can't
16 let that control what we're doing. The hearing will begin at
17 8:00 o'clock in the morning on the 29th, so that we can get it
18 finished.

19 Does anyone have a conflict at 8:00 a.m. on the
20 29th?

21 (No verbal response)

22 THE COURT: Okay. The hearing is continued from
23 this -- I'm sorry. Mr. Brimmage?

24 MR. BRIMMAGE: Your Honor, one point of
25 clarification. With the hearing then, we can work with the

1 Debtors, or do we need to work with you on what the new
2 objection deadline would be?

3 THE COURT: Why don't I just set the new objection
4 deadline for the 22nd at 5:00 o'clock p.m.?

5 MR. BRIMMAGE: Thank you, Your Honor.

6 THE COURT: Is there anybody that can't make
7 8:00 a.m. --

8 UNIDENTIFIED: Thank you, Your Honor.

9 THE COURT: -- 8:00 a.m. on the 29th?
10 (No verbal response)

11 THE COURT: Oh, wait. I do have somebody else that
12 wants to speak. Let me see who that is.

13 UNIDENTIFIED: (Indiscernible).

14 THE COURT: I'm sorry?

15 UNIDENTIFIED: (Indiscernible) of Weil Gotshal for
16 the Debtors.

17 THE COURT: All right. Go ahead, please.

18 UNIDENTIFIED: Thank you, Your Honor.

19 Before we go through the effort of scheduling and
20 incurring what I'm sure will be a great deal of time and
21 effort on behalf of the parties, I think we probably need a
22 moment to confer with Kirkland and their clients with respect
23 to their willingness to proceed on this timeline, which I'm
24 sure that they do, in fact, but we still have our bird in the
25 hand and know whether or not we need to pivot at this point,

1 Your Honor.

2 THE COURT: If the case falls apart, it falls apart.
3 You can file something. I'm not going to delay scheduling all
4 this stuff. If it's a problem for the --

5 UNIDENTIFIED: Understood.

6 THE COURT: If it's a problem for the lenders, it's
7 a problem for the lenders. I'm not making them stick around.
8 And if you want to proceed with your old motion on the 16th,
9 I'm going to let you do that. But I don't think you want to
10 proceed with your old, unrevised motion. So that will be up
11 to you and them. I'm not going to put Mr. Serajeddini on the
12 spot right now. We'll see what they do.

13 All right. Anyone else?

14 (No verbal response).

15 THE COURT: Okay. We'll see you on the 29th.
16 Contact Ms. Do if you all need any emergency
17 hearings. Thank you. We're in --

18 UNIDENTIFIED: Thank you, Your Honor.

19 THE COURT: We're in recess.

20 UNIDENTIFIED: Thank you, Your Honor.

21 THE COURT: Thank you.

22 COUNSEL: Thank you, Your Honor. Thank you, Your
23 Honor. Thank you.

24 THE COURT: Thank you.

25 (Proceedings concluded at 3:27 p.m.)

* * * * *

I certify that the foregoing is a correct transcript
to the best of my ability produced from the
ZOOM/video/telephonic recording of the proceedings in the
above-entitled matter.

/S./ MARY D. HENRY

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